

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**January 23, 2013**

Diane M. Fremgen  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2012AP1133**

**Cir. Ct. No. 2011CF34**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**JACK E. MINNIECHESKE,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Shawano County:  
JAMES R. HABECK, Judge. *Affirmed.*

¶1 CANE, J.<sup>1</sup> Jack Minniecheske, pro se, appeals a judgment of conviction for pointing a firearm at another.<sup>2</sup> He argues: the State improperly

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

relied on a 1997 felony conviction to charge him with felon in possession of a firearm; the court should have suppressed the victim impact statement; and he should be allowed to withdraw his no contest plea to pointing a firearm at another. We reject Minniecheske's arguments and affirm.<sup>3</sup>

¶2 On September 17, 2010, the State charged Minniecheske with pointing a firearm at another. On February 3, 2011, the State amended the complaint and added a count of felon in possession of a firearm. To support the felon in possession of a firearm charge, the State alleged that Minniecheske had been convicted in 1997 of felony fleeing/eluding an officer. Ultimately, Minniecheske pled no contest to pointing a firearm at another and the felon in possession of a firearm charge was dismissed and read in. The court sentenced Minniecheske to a \$250 fine and costs.

¶3 On appeal, Minniecheske first objects to the dismissed and read-in felon in possession of a firearm charge. He asserts the State's reliance on the 1997 felony conviction to support the charge was improper because the assistant district attorney in the 1997 case had a conflict of interest. Minniecheske contends that the assistant district attorney should have disqualified herself from prosecuting that case, and he requests that we vacate the 1997 felony conviction.

¶4 Minniecheske's 1997 felony conviction, however, is not the subject of this appeal. This appeal is limited to Minniecheske's 2011 conviction. We will

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<sup>2</sup> Minniecheske was represented by counsel in the circuit court.

<sup>3</sup> In making our determination, we reviewed Minniecheske's untimely filed reply brief.

not address Minniecheske's assertion that the 1997 conviction should be vacated as a result of his perceived conflict of interest.

¶5 Next, as far as Minniecheske's objection to the State's reliance on the 1997 conviction to support its amendment of the complaint, Minniecheske's 1997 conviction remained of record and was unreversed at the time the State amended the complaint. The State's reliance on the 1997 conviction to support the felon in possession of a firearm charge, which was ultimately dismissed and read in, was proper.

¶6 Minniecheske also objects to the victim impact statement. After Minniecheske pled no contest to pointing a firearm at another, the State filed the victim impact statement in the form of a two-page letter from the victim's mother. The mother asked for a harsh sentence and stated Minniecheske's actions had interfered with her son's schooling and his ability to feel safe.

¶7 Minniecheske asserts the court should have suppressed the victim impact statement because it was "frivolous" and the victim stole Minniecheske's property. Additionally, he argues that, because the court failed to suppress the victim impact statement, he should be permitted to withdraw his no contest plea.

¶8 WISCONSIN STAT. § 950.04(1v)(m) gives victims of crimes the right "to provide statements concerning sentencing, disposition, or parole." In this case, the State properly submitted the victim impact statement pursuant to § 950.04(1v)(m), and the court properly reviewed it. *See id.* Moreover, given Minniecheske's sentence, a fine and costs, there is no indication in the record that the court sentenced Minniecheske more harshly because of the allegations in the victim impact statement.

¶9 Finally, Minniecheske is not entitled to withdraw his no contest plea based on the submission of the victim impact statement. To withdraw a plea after sentencing, Minniecheske must show, by clear and convincing evidence, that withdrawal of the plea is necessary to correct a manifest injustice. *See State v. Kivioja*, 225 Wis. 2d 271, 286, 592 N.W.2d 220 (1999). The court's review of the victim impact statement does not amount to a manifest injustice.

*By the Court.*—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.

